

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

SIMONE E. PHOENIX,  
Plaintiff,

V

.....

C.A. NO.: 1:20-cv-00152-WES-PAS

DAY ONE, DEBRA WESTGATE-SILVA,  
FAMILY SERVICE OF RHODE ISLAND, INC.,  
CARLA CUELLAR, alias, TIMOTHY McGANN,  
alias, PHILIP HARTNETT, alias, EDMOND  
ESTEN, alias, BRIAN DYER, alias, DWIGHT  
EDDY, alias, SEAN COMELLA, alias, JAMES  
CRYAN, alias, and JEFF RICHARDS, alias,  
THOMAS VERDI, alias, FRANCISCO COLON,  
alias, MICHAEL WHEELER, alias, each  
individually and in his capacity as a Providence  
Police officer, and CITY OF PROVIDENCE, by  
and through it's Treasurer, James J. Lombardi, III,  
Defendants.

**DEFENDANTS, DAY ONE AND DEBRA WESTGATE-SILVA’S,**  
**ANSWER TO THE PLAINTIFF’S SECOND AMENDED COMPLAINT**

### Introductory Statement.

1. Denied.
2. Denied.
3. Denied.
4. Denied.
5. Denied.
6. This defendant lacks sufficient information to form a belief as to the truth of this averment and therefore denies the same.
7. This defendant lacks sufficient information to form a belief as to the truth of this averment and therefore denies the same.

## **II. PARTIES**

8. This defendant lacks sufficient information to form a belief as to the truth of this averment and therefore denies the same.
9. This defendant lacks sufficient information to form a belief as to the truth of this averment and therefore denies the same.
10. This defendant lacks sufficient information to form a belief as to the truth of this averment and therefore denies the same.
11. Denied.
12. This defendant lacks sufficient information to form a belief as to the truth of this averment and therefore denies the same.
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22. This defendant lacks sufficient information to form a belief as to the truth of this averment and therefore denies the same.

23. This defendant lacks sufficient information to form a belief as to the truth of this averment and therefore denies the same.

24. This defendant lacks sufficient information to form a belief as to the truth of this averment and therefore denies the same.

**III. Jurisdiction**

25. Denied.

**IV. Venue**

26. Denied.

**V. Facts**

27. This defendant lacks sufficient information to form a belief as to the truth of this averment and therefore denies the same.

28. This defendant lacks sufficient information to form a belief as to the truth of this averment and therefore denies the same.

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48. This defendant lacks sufficient information to form a belief as to the truth of this averment and therefore denies the same.
49. Denied.
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80. This defendant lacks sufficient information to form a belief as to the truth of this averment and therefore denies the same.

**VII. Claims for Relief**

81. This defendant lacks sufficient information to form a belief as to the truth of this averment and therefore denies the same.

82. Defendants repeat, reallege, and incorporate by reference each and every response to the allegations contained in Paragraphs 1 through 81 of the complaint in response to Paragraph 82, as if fully set forth herein.

**COUNT ONE**

***Malicious Prosecution in Violation of the Fourth, Fifth and Fourteenth Amendments, Actionable Through 42. U.S.C. § 1983 Against All Defendants***

83. Denied.

**COUNT TWO**

***Common Law Malicious Prosecution Against All Defendants***

84. Denied.

**COUNT THREE**

***Common Law Abuse of Process Against All Defendants***

85. Denied.

**AFFIRMATIVE DEFENSES**

1. The plaintiff's claims are barred by the doctrine of assumption of the risk.
2. The plaintiff's claims are barred by a failure to mitigate such alleged damages.
3. The alleged damages are the result of the plaintiff's own conduct.
4. The plaintiff's damages, if any, were caused by superseding and/or intervening causes.
5. The plaintiff's damages, if any, were caused by persons, firms or corporations for whom this defendant is not legally responsible.
6. The plaintiff's claims are barred by the doctrine of waiver and/or release.
7. The plaintiff's claims are barred because the damages, if any, are the result of unrelated, pre-existing or subsequent conditions unrelated to the defendant's conduct.
8. The plaintiff's claims are barred by the statute of limitations.
9. This defendant pleads the defense of qualified immunity.
10. This defendant pleads the defense of qualified privilege.

**DEFENDANTS DEMAND TRIAL BY JURY AND DESIGNATE  
RAJARAM SURYANARAYAN AS TRIAL COUNSEL**

Defendants, DAY ONE & DEBRA WESTGATE-SIVLA,  
By their Attorneys,

/s/ Rajaram Suryanarayan  
Rajaram Suryanarayan (#4451)  
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**CERTIFICATION**

I hereby certify that on this date, I electronically filed the within document with the Clerk of the Court using the CM/ECF system which will send notification of such filing(s) to all counsel of record. The document is available for viewing and downloading through the ECF system.

/s/ Rajaram Suryanarayan